

COTTONWOOD HEIGHTS

RESOLUTION No. 2021-40

A RESOLUTION APPROVING AN AGREEMENT FOR HISTORIC RESOURCES SURVEY WITH KORRAL BROSCHINSKY

WHEREAS, the city council (the "*Council*") of the city of Cottonwood Heights ("*City*") met in regular session on 17 August 2021 to consider, among other things, approving an "Independent Contractor Agreement" (the "*Agreement*") with Korral Broschinsky ("*Contractor*") whereunder Contractor would provide an intensive level survey of 18 of City's historic, architectural and archeological resources as specified by City's historic committee, and would prepare and provide a national register of historic places nomination for the Butler School Teachers' Dormitory site; and

WHEREAS, Contractor has significant experience in providing services of the type needed by City; and

WHEREAS, City desires to retain Contractor to provide such services as specified in the Agreement; and

WHEREAS, the Council has reviewed the form of the Agreement, a photocopy of which is annexed hereto; and

WHEREAS, after careful consideration, the Council has determined that it is in the best interests of the health, safety and welfare of City's residents to approve City's entry into the Agreement as proposed;

NOW, THEREFORE, BE IT RESOLVED by the city council of the city of Cottonwood Heights that the attached Agreement is hereby approved, and that City's mayor and recorder are authorized and directed to execute and deliver the Agreement on behalf of City.

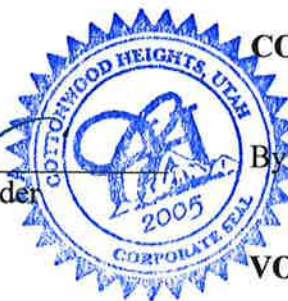
This Resolution, assigned no. 2021-40, shall take effect immediately upon passage.

PASSED AND APPROVED effective 17 August 2021.

ATTEST:

By:

Paula Melgar, Recorder



By:

Michael J. Peterson, Mayor

VOTING:

Michael J. Peterson

Yea ☒ Nay ☐

Douglas Petersen

Yea ☒ Nay ☐

J. Scott Bracken

Yea ☒ Nay ☐

Tali C. Bruce

Yea ☒ Nay ☐

Christine Watson Mikell

Yea ☒ Nay ☐

DEPOSITED in the office of the City Recorder this 17th day of August 2021.

RECORDED this 19 day of August 2021.

Independent Contractor Agreement

THIS INDEPENDENT CONTRACTOR AGREEMENT (this "*Agreement*") is entered into effective 17 August 2021 between **COTTONWOOD HEIGHTS**, a Utah municipality ("*City*") and **KORRAL BROSHINSKY**, an individual ("*Contractor*").

R E C I T A L S:

A. Pursuant to Chapter 2.140 of City's code of ordinances ("*City Code*"), the Cottonwood Heights Historic Committee (the "*Committee*") is a City advisory committee that is charged with preserving City's history by organizing historically-related performances or other events; by organizing historical displays and exhibits; by collecting and preserving oral and written histories, photographs, artifacts and the like concerning City; and by undertaking other actions within the scope of the Committee's authorized purposes.

B. In furtherance of those responsibilities, the Committee desires City to engage Contractor to perform a national register of historic places nomination and a selective intensive level survey of 18 City-designated historic, architectural and archeological resources within City's boundaries as outlined in Contractor's 20 April 2021 (revised) proposal (the "*Proposal*") to City.

C. Contractor has significant experience in providing services of the type outlined in the Proposal, and desires to be so engaged by City.

D. The parties have determined that it is mutually advantageous to enter into this Agreement.

A G R E E M E N T:

NOW, THEREFORE, in consideration of the premises, the mutual covenants and undertakings of the parties hereto, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. **Engagement of Contractor.** City hereby engages Contractor, and Contractor hereby agrees, to perform the Services (defined below) as specified in this Agreement.

2. **Detailed Description of the Services.** In furtherance of this Agreement, Contractor shall do, perform, and carry out in a good, professional and timely manner, the following services (such work, together with all ancillary and additional services and materials as may be reasonably required to accomplish the desired result in a competent, comprehensive and finished manner, is referred to herein as the "*Services*"):

(a) **National Register Nomination.** Provide and perform the national register of historic places nomination outlined in the Proposal.

(b) **Intensive Level Survey Services.** Provide and perform the selective intensive level survey services for 18 City-designated properties outlined in the Proposal.

(c) **Additional Related Services.** Perform such additional related services in connection with such nomination and selective intensive level survey:

(i) As may be required by the agreement (the “*Grant*”) between the Utah Department of Cultural and Community Engagement (the “*Department*”) and City providing funding for the Services (a copy of which has been made available to Contractor); and

(ii) As City reasonably may direct.

If there is a conflict between the level of Services required by the Grant and those required by the Proposal, Contractor shall provide the higher, better and more complete and comprehensive level of Services, as reasonably determined by City.

Contractor shall complete and bill City for the Services by 30 June 2022 or such other timetable as may be reasonably required by the Grant.

3. **Fees for Services.** City shall pay Contractor for Services actually performed as follows: (a) \$17,400 for the Services outlined in the Proposal; and (b) a pre-approved price for any additional related Services under section 2(c)(ii), above, as mutually agreed by City and Contractor on a case-by-case basis.

4. **Method of Payment.** Unless a progress-based billing arrangement is hereafter specified by Committee in writing, with a copy to City’s director of finance, Contractor shall submit monthly to City a detailed invoice setting forth the Services performed since the last monthly billing, and specifying the charges therefor computed as specified above. City shall pay (or provide a reasoned objection to) the amount set forth in the current invoice within 30 days after receipt.

5. **Services Performed in a Professional, Reasonable Manner.** Contractor shall perform the Services in a professional, reasonable, responsive manner in compliance with the Proposal, the Grant, all laws, and all applicable standards of performance. Subject to the foregoing, the exact nature of how the Services are to be performed and other matters incidental to providing the Services shall remain with Contractor.

6. **Personnel, Equipment and Facilities.** Except as otherwise specified in this Agreement, Contractor shall at its sole cost furnish all supervision, personnel, labor, equipment, materials, supplies, office space, communication facilities, vehicles for transportation and identification cards, and shall obtain all licenses and permits, necessary or incidental to performing any and all of the Services. Contractor shall not use City staff as a means to perform the Services in lieu of using Contractor’s own staff, nor shall Contractor perform any of the Services on City’s premises or utilizing any City equipment or supplies.

7. **Term.** This Agreement shall be effective on the date hereof. This Agreement shall terminate no later than 30 June 2022 or such later date as may be required by the terms of the Grant.

8. **Assignment and Delegation.** If Contractor chooses to subcontract to one or more third parties any part(s) of the Services, such subcontract shall be at Contractor’s own risk, and Contractor shall remain fully responsible for the full, timely and proper performance of all of the Services.

9. **Independent Contractor Status.** Contractor shall perform the Services as an independent contractor, and all persons employed by Contractor in connection herewith shall be employees or independent contractors of Contractor and not employees of City in any respect.

(a) **Control.** Contractor shall have complete control and discretion over all personnel providing Services hereunder.

(b) **Salary and Wages.** City shall not have any obligation or liability for the payment of any salaries, wages or other compensation to personnel providing Services hereunder.

(c) **No Employment Benefits.** All personnel providing Services are and shall be and remain Contractor's employees, and shall have no right to any City pension, civil service, or any other City benefits pursuant to this Agreement or otherwise.

10. **Termination.** Either party may terminate this Agreement, without cause, upon at least 30 days' prior written notice to the other party. Either party also may terminate this Agreement for cause upon at least ten days' prior written notice and opportunity to cure to the defaulting party. Neither party shall have any liability to the other for damages nor other losses because of termination of this Agreement, provided; however, City shall pay Contractor all amounts due for actual work performed within the scope of Services before the effective date of the termination, as specified herein.

11. **Indemnification.** Contractor shall defend, indemnify, save and hold harmless City (including, without limitation, its elected and appointed officers, employees, successors and assigns) from and against any and all demands, liabilities, claims, damages, actions and/or proceedings, in law or equity (including reasonable attorneys' fees and cost of suit), relating to or arising in any way from the Services provided, or to be provided, hereunder. Contractor shall so defend, indemnify, save and hold harmless City whether such demands, liabilities, claims, damages, actions and/or proceedings are attributable to the simple negligence, gross negligence, recklessness or intentional misconduct of Contractor (or any officers, employees, agents, subcontractors, etc. of Contractor), or under any other applicable legal theory, and shall be effective whether or not such negligence, recklessness or other misconduct reasonably was foreseeable. Nothing herein shall, however, require Contractor to indemnify as provided in this section with respect to (a) City's own negligence or intentional misconduct, or (b) any demand, liability, claim, damage, action and/or proceeding not alleged to relate to the Services provided, or to be provided, by Contractor hereunder.

12. **Laws and Regulations.** Contractor shall at all times comply with all applicable laws, statutes, rules, regulations, and ordinances, including without limitation, those governing wages, hours, desegregation, employment discrimination, workers' compensation, employer's liability and safety. Contractor shall comply with equal opportunity laws and regulations to the extent that they are applicable.

13. **Non-Exclusive Rights.** Nothing in the Agreement is to be construed as granting to Contractor any exclusive right to perform any or all Services (or similar services) now or hereafter required by City.

14. **Conflict Resolution.** Except as otherwise provided for herein, any dispute between the parties regarding the Services which is not disposed of by agreement shall be decided by City, which shall provide written notice of the decision to Contractor. Such decision by City shall be final unless Contractor, within 30 calendar days after such notice of City's decision, provides to City a written notice of protest, stating clearly and in detail the basis thereof. Contractor shall continue its performance of this Agreement during such resolution. If the parties do not thereafter agree to a mutually-acceptable resolution, then they shall resolve the dispute pursuant to section 15 below.

15. **Claims and Disputes.** Unresolved claims, disputes and other issues between the parties arising out of or related to this Agreement shall be decided by litigation in the Third Judicial District Court of Salt Lake County, Utah. Unless otherwise terminated pursuant to the provisions hereof or otherwise agreed in writing, Contractor shall continue to perform the Services during any such litigation proceedings and City shall continue to make undisputed payments to Contractor in accordance with the terms of this Agreement.

16. **Notices.** Any notice required or permitted to be given hereunder shall be deemed sufficient if given by a communication in writing and shall be deemed to have been received (a) upon personal delivery or actual receipt thereof, or (b) within three days after such notice is deposited in the United States Mail, postage prepaid, and certified and addressed to the parties as set forth below:

City:	COTTONWOOD HEIGHTS Attn. Tim Tingey, City Manager 2277 East Bengal Blvd. Cottonwood Heights, UT 84121
with a copy to:	Wm. Shane Topham JONES WALDO HOLBROOK & McDONOUGH 170 South Main Street, 15 th Floor Salt Lake City, UT 84101
Contractor:	Korral Broschinsky 4874 Taylors Park Drive Taylorsville, UT 84123-4712

17. **Additional Provisions.** The following provisions also are integral to this Agreement:

(a) **Titles and Captions.** All section or subsection titles or captions herein are for convenience only. Such titles and captions shall not be deemed part of this Agreement and shall in no way define, limit, augment, extend or describe the scope, content or intent of any part or parts hereof.

(b) **Pronouns and Plurals.** Whenever the context may require, any pronoun used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plurals and vice versa.

(c) Applicable Law. The provisions of this Agreement shall be governed by and construed in accordance with the laws of the state of Utah.

(d) Integration. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof, and supersedes all prior agreements and understandings pertaining thereto.

(e) Time. Time is the essence hereof.

(f) Survival. All agreements, covenants, representations and warranties contained herein shall survive the execution of this Agreement and shall continue in full force and effect throughout the term of this Agreement.

(g) Waiver. No failure by any party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or of such or any other covenant, agreement, term or condition. Any party may, by notice delivered in the manner provided in this Agreement, but shall be under no obligation to, waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation or covenant of any other party. No waiver shall affect or alter the remainder of this Agreement but each and every other covenant, agreement, term and condition hereof shall continue in full force and effect with respect to any other then existing or subsequently occurring breach.

(h) Rights and Remedies. The rights and remedies of the parties hereto shall not be mutually exclusive, and the exercise of one or more of the provisions of this Agreement shall not preclude the exercise of any other provisions hereof.

(i) Severability. In the event that any condition, covenant or other provision hereof is held to be invalid or void, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect any other covenant or condition herein contained. If such condition, covenant or other provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

(j) Litigation. If any action, suit or proceeding is brought by a party hereto with respect to a matter or matters covered by this Agreement, all costs and expenses of the prevailing party incident to such proceeding, including reasonable attorneys' fees, shall be paid by the non-prevailing party.

(k) Exhibits. All exhibits annexed to this Agreement are expressly made a part of this Agreement as though completely set forth herein. All references to this Agreement, either in this Agreement itself or in any of such writings, shall be deemed to refer to and include this Agreement and all such exhibits and writings.

(l) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

(m) Authorizations. Each person signing this Agreement represents and warrants that he is authorized to sign this Agreement for the party indicated.

DATED effective the date first-above written.


CITY:

ATTEST:


Paula Melgar, Recorder

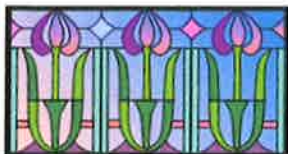


COTTONWOOD HEIGHTS

By: 
Michael J. Peterson, Mayor

CONTRACTOR:


KORRAL BROSCHINSKY



KORRAL BROSCHINSKY
Preservation Documentation Resource
4874 S. Taylors Park Drive
Taylorsville, Utah 84123-4712
(801) 913-5645
email: kbro@kbropreservation.com

Proposal for Cottonwood Heights City Historic Committee (CLG)

April 20, 2021 (revised)

NATIONAL REGISTER OF HISTORIC PLACES NOMINATION

2680 East Fort Union Boulevard, Cottonwood Heights, Salt Lake Co., Utah
Butler School Teachers' Dormitory

includes Completed National Register of Historic Places (NRHP) nomination (NPS 10-900a)
USGS map or Aerial photo with property marked, (ArcGIS-generated)
Minimum of twenty-four digital photographs of property for NRHP submission and
Board of State History presentation
High quality photocopies of historic photographs, if available
Site plan sketch of property (ArcGIS-generated)
Completed historical & biographical research materials of owners/occupants
Three copies of all research materials (one for the Utah State Historic Preservation
Office/SHPO, one for Cottonwood Heights CLG, one for property owner)

SUBTOTAL **\$1,200.00**

INTENSIVE LEVEL SURVEYS **\$16,200.00**
(18 properties @ \$900 per ILS)

includes: Completed Historic Site Form for each property: describes historic and current
condition of property and usage during the historic period
Site sketch plan of the property and map with location of property marked
Minimum of six digital photographs of each property
Letter-size file folder and three copies of all research materials (one for Utah
SHPO, one for Cottonwood Heights CLG, one for property owner)

TOTAL **\$17,400.00**

Amount includes all expenses.

All work to be performed to the standards set by the Utah State Historic Preservation Office.

Payment is due on receipt of invoice.

A late fee of \$50 will be assessed if full balance is not paid by thirty days from date of invoice.